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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. SAMUEL PETER RODRIGUEZ, Defendant and Appellant.	D072450 (Super. Ct. No. SCD270826)

APPEAL from a judgment of the Superior Court of San Diego County, Laura W. Halgren, Judge. Affirmed.

Jason L. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Samuel Rodriguez of one count of making a criminal threat to his attending psychiatrist, Dr. S. (Pen. Code, § 422, subd. (a).) At the time of the threats,

they were in the emergency department of the County Mental Health hospital (CMH), while Rodriguez being detained on a hold under Welfare and Institutions Code section 5150.[1] The sole issue on appeal is whether the trial court committed reversible error in failing to instruct the jury on the affirmative defense of self-defense. We affirm.

I. PROCEDURAL BACKGROUND

At trial, a jury convicted Rodriguez of one count of making a criminal threat in violation of Penal Code section 422, subdivision (a).[2] The court sentenced Rodriguez to three years formal probation with conditions, including that he not have any contact with Dr. S., and required Rodriguez to pay specified fees, fines, and penalties. Rodriguez timely appealed.

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1 Welfare and Institutions Code section 5150 provides in part: "(a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, . . . a peace officer . . . may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. . . ."

2 "Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, . . . is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety . . . shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (Pen. Code, § 422, subd. (a).)

II. FACTUAL BACKGROUND

We generally review the record in a light most favorable to the judgment, presuming all facts in support of the judgment that the jury could reasonably deduce from the evidence. (*People v. Powell* (2018) 5 Cal.5th 921, 944 [sufficiency of evidence review].) However, where, as here, the issue on appeal is whether the defendant was entitled to have the jury instructed on a specified affirmative defense, we recite the evidence in support of the potential defense in a light most favorable to the defendant. (*People v. Mentch* (2008) 45 Cal.4th 274, 290 (*Mentch*).)

In the mid-morning on February 20, 2017, responding to a weapons call, police found Rodriguez in the garage of a residence in the Mira Mesa area of San Diego. He was agitated and upset that the police were there. The police found a baseball bat, machete, and a folding knife in Rodriguez's car. After one of the officers spoke with Rodriguez's wife, the officers transported Rodriguez to CMH for a 72-hour hold under section 5150 (at times, 5150 hold). (See fn. 1, *ante*.)

As the officers were placing Rodriguez, who was handcuffed, into their vehicle, he began swearing at them and his family members. He was yelling and screaming, because he did not want to be taken to the hospital. He threatened the officers and others with physical harm from both Hell's Angels and himself. As he was transported to CMH, Rodriguez threatened to hurt the hospital staff; he told the officers that he had received 10 years of formal training in mixed martial arts (MMA), Filipino knife fighting, military strategy, and hand-to-hand combat and had participated in 11 professional "cage fights" and five professional "boxing fights."

When they arrived at CMH, Rodriguez was still agitated. Although he allowed the triage nurse to check his vital signs and provided her with some information, for the most part, he was uncooperative. Rodriguez told the triage nurse that someone was going to get hurt, because he needed to leave. Dr. S. was a CMH psychiatrist who, on that date, was assigned to CMH's emergency department and Rodriguez was her patient.

Outside of Rodriguez's presence, the police officers and triage staff reported what they knew to Dr. S.—including that Rodriguez had said he was an MMA fighter and that the police had recovered weapons from his car. The nursing staff advised Dr. S. that Rodriguez was agitated, hostile, and angry and that he threatened to hurt someone if he was not allowed to leave. Dr. S. then interviewed Rodriguez, in an attempt first to build rapport and then to obtain a medical history that would help with her medical analysis. She explained who she was and asked him why he was at CMH. Although Rodriguez did not answer all of the questions, many of his responses were "clear" and "coherent"; and from what he did say, Dr. S. concluded both that he understood her and that he knew what was happening. This conversation lasted 20-25 minutes.

Rodriguez continued to say that he did not want to be at CMH; he was angry, irritable, distressed and loud. During the initial interview, Rodriguez told Dr. S. that she and her staff needed "to watch out" when the police removed the handcuffs and, in any event, that "he could take out people's knees." Approximately 15-20 minutes into the evaluation, as a result of Rodriguez's "extreme anger, agitation, [and] irritability," Dr. S. filled out an order for forced medication. Before directing its application, Dr. S. first offered Rodriguez the medication. He initially refused it, explaining that he was afraid of

needles;[3] but after she educated him about the drugs and encouraged him, Rodriguez took oral doses of Haloperidol (an antipsychotic medication), Ativan (an antianxiety medication), and Benadryl (a prophylactic medication to combat potential side effects of the Haloperidol).

When Dr. S. checked on Rodriguez 10 minutes later, there was little change. He was still tense and angry. According to Dr. S., the "medication had limited effects"; Rodriguez's "demeanor was relatively the same from when he came in." In a raised voice, Rodriguez again threatened Dr. S. that, if he was not discharged, she and her staff "would all pay."

Shortly after Dr. S.'s visit, a nurse brought Rodriguez something to eat and drink. Rodriguez became further upset, threatening "to take out the nurse's knees"; regardless of the handcuffs, according to Rodriguez's threat, he could use other parts of his body to effect the harm.

Approximately one half hour after Rodriguez took the oral medications, Dr. S. again checked on Rodriguez. During this second visit, Rodriguez's demeanor had not changed, and the nurses advised Dr. S. that Rodriguez would not allow them to check his vital signs. She was concerned, since checking a patient's vital signs is the only way to monitor the patient's safety once the patient begins taking medication. Dr. S. again explained to Rodriguez what a 5150 hold was, the purpose of the emergency treatment,

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[3] One of the police officers testified that he told Dr. S. and that he heard Rodriguez tell Dr. S. that he (Rodriguez) was "deathly afraid of needles." Dr. S. testified that Rodriguez told her that "he did not like needles"; she did not recall the officer telling her anything related to Rodriguez and needles.

and the related need to monitor and assess him thoroughly and fully due to the reasons he had been brought to CMH's emergency department. Rodriguez did not believe that a 5150 hold was necessary for him and again responded with upset that he was not being discharged from the hospital. At this point, Dr. S. again offered Rodriguez another dose of oral medications, which he declined.

As Rodriguez began to realize that he would have to stay in the hospital, he became more upset, threatening Dr. S. as follows: when he was released, he would meet her "outside"—which she considered "a very credible threat"; "he knew Hell's Angels"; and she and her staff needed to "watch out, watch your backs." Still in handcuffs and with two police officers in the room, Rodriguez stood up and started walking toward Dr. S. "in a menacing, fighting stance." Dr. S. was "very scared" and for her own safety left the room and stood outside in the hallway looking in. Approximately one hour after Rodriguez had taken his oral medications, a nurse who was present testified that, as Rodriguez was pacing, in a very loud hostile voice, he threatened to kill his mother and the mother of his children and chop one or both into pieces.

At this point in time—between 30 and 60 minutes after administration of the oral medications—Dr. S. ordered intramuscular "emergency medication." More specifically, because Rodriguez had not shown signs of improving after the oral medications, Dr. S. ordered that Rodriguez be strapped to a gurney (with handcuffs removed) and given a shot of Thorazine, which Dr. S. described as an antipsychotic drug that helps patients like Rodriguez relax and go to sleep. Dr. S. remained in the hallway outside of Rodriguez's room, where she could see and hear what was happening.

The two police officers and at least three staff removed the handcuffs, applied soft restraints, and strapped Rodriguez onto the gurney. As they were encouraging him to cooperate, Rodriguez yelled obscenities and screamed that he did not want either medication or an injection. One of the nurses had brought in oral medications, but when he refused them, and the nurse left the room, Rodriguez threatened to kill her and Dr. S.—who was approximately five feet away from Rodriguez and visibly reacted to his statement.

Once Rodriguez was restrained on the gurney, Rodriguez looked directly at Dr. S., who was "relatively close to him" in the hallway outside of his room, and threatened that, once he got out of CMH, he would "come and find the first doctor" and "kill that bitch." The nurse then administered the emergency injection.[4]

Dr. S. understood Rodriguez's threats to be directed to her, and she was scared. She believed them to be credible, because his physically threatening communications to her earlier in the day were clear and she knew that he had weapons. As a result, Dr. S. immediately relinquished care of Rodriguez and arranged for another physician to take over responsibility for him.[5]

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4 The evidence is conflicting as to whether Rodriguez threatened Dr. S. *before* or *after* he received the injection. Since the issue on appeal is whether Rodriguez was entitled to use self-defense to protect himself from imminent harm, we view the evidence as if the threat preceded the injection. (*Mentch, supra*, 45 Cal.4th at p. 290 [because an affirmative defense is at issue, we consider the evidence in light most favorable to defendant].)

5 Threats and aggression are part of Dr. S.'s routine. On a normal day at CMH, for example, approximately seven to 10 percent of Dr. S.'s patients threaten her, although she

Rodriguez was in Dr. S.'s care for less than three hours. During that time, Dr. S. determined that Rodriguez was "in crisis" when he first arrived at CMH and preliminarily determined that, by the time she relinquished his care to another psychiatrist, Rodriguez suffered from a psychotic disorder, a mood disorder, cannabis dependence, and relationship problems. Because she relinquished his care, Dr. S. did not know what Rodriguez's ultimate diagnoses included.

Rodriguez was arrested later that day, in the early evening of February 20, 2017, and charged with one count of making a criminal threat in violation of Penal Code section 422.

Even after she relinquished Rodriguez's care, Dr. S. did not stop feeling afraid. During the three months between the threats and the trial, Dr. S. changed her work schedule, gave up shifts due to anxiety, moved her residence, and was looking into getting a security dog. When she testified at trial in May 2017, Dr. S. was still afraid as a result of Rodriguez's threats.

During closing argument, the prosecutor elected as the operative threats those that Rodriguez made to Dr. S. after he was placed on the gurney.

III. DISCUSSION

On appeal, Rodriguez argues that the trial court erred in not instructing the jury on the affirmative defense of self-defense. Rodriguez contends that he was entitled to have

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had never considered any prior threat credible enough to relinquish a patient's care prior to Rodriguez.

the jury instructed on "*his right to defend himself against an unwanted and unlawful injection*." (Italics added.)

Although the court has a sua sponte duty to instruct on applicable affirmative defenses (*People v. Brooks* (2017) 3 Cal.5th 1, 71, 73 (*Brooks*), in the present case the parties brought the issue to the court's attention. Here, the trial court twice considered and rejected a self-defense instruction—once during pretrial proceedings, and again after the close of evidence at the instructions conference—following input and argument from counsel.[6]

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6 The instruction that counsel and the court discussed was an appropriate adaption of CALCRIM No. 3470, which provides in full: "Self-defense is a defense to <*insert list of pertinent crimes charged*>. The defendant is not guilty of (that/those crime[s]) if (he/she) used force against the other person in lawful (self-defense/ [or] defense of another). The defendant acted in lawful (self-defense/ [or] defense of another) if: [¶] "1. The defendant reasonably believed that (he/she/ [or] someone else/ [or] <*insert name of third party*>) was in imminent danger of suffering bodily injury [or was in imminent danger of being touched unlawfully]; [¶] 2. The defendant reasonably believed that the immediate use of force was necessary to defend against that danger; [¶] AND [¶] 3. The defendant used no more force than was reasonably necessary to defend against that danger. [¶] Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. The defendant must have believed there was (imminent danger of bodily injury to (himself/herself/ [or] someone else)/[or] an imminent danger that (he/she/[or] someone else) would be touched unlawfully). Defendant's belief must have been reasonable and (he/she) must have acted because of that belief. The defendant is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If the defendant used more force than was reasonable, the defendant did not act in lawful (self-defense/ [or] defense of another). [¶] When deciding whether the defendant's beliefs were reasonable, consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the defendant's beliefs were reasonable, the danger does not need to have actually existed. [¶] [The slightest touching can be unlawful if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.] [¶] [The defendant's belief

On appeal, Rodriguez argues that a proper application of self-defense " justifies any act of 'resistance' that would otherwise be a crime when it is done to defend against an unlawful touching." More specifically, Rodriguez argues that his threat to commit an act of violence toward Dr. S. was "justified under the law" because it was done to resist the anticipated unlawful touching from the injection ordered by Dr. S.

A. *Law*

The trial court must instruct on any affirmative defense on which the defendant is relying, as long as it "is supported by substantial evidence and is not inconsistent with the defendant's theory of the case." (*Brooks*, *supra*, 3 Cal.5th at p. 73; see *People v. Manriquez* (2005) 37 Cal.4th 547, 581 [referring to self-defense].) In this context, substantial evidence means evidence of a defense, which, if believed, would be sufficient

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that (he/she/ [or] someone else) was threatened may be reasonable even if (he/she) relied on information that was not true. However, the defendant must actually and reasonably have believed that the information was true.] [¶] [If you find that <*insert name of victim*> threatened or harmed the defendant [or others] in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.] [¶] [If you find that the defendant knew that <*insert name of victim*> had threatened or harmed others in the past, you may consider that information in deciding whether the defendant's conduct and beliefs were reasonable.] [¶] [Someone who has been threatened or harmed by a person in the past is justified in acting more quickly or taking greater self-defense measures against that person.] [¶] [If you find that the defendant received a threat from someone else that (he/she) reasonably associated with <*insert name of victim*>, you may consider that threat in deciding whether the defendant was justified in acting in (self-defense/ [or] defense of another).] [¶] [A defendant is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of (death/bodily injury/ <*insert crime*>) has passed. This is so even if safety could have been achieved by retreating.] [¶] The People have the burden of proving beyond a reasonable doubt that the defendant did not act in lawful (self-defense/ [or] defense of another). If the People have not met this burden, you must find the defendant not guilty of <*insert crime(s) charged*>."

for a reasonable jury to find a reasonable doubt as to the defendant's guilt. (*People v. Salas* (2006) 37 Cal.4th 967, 982-983.) Stated differently, a trial court is under no obligation to provide a self-defense instruction unless the defense is supported by " 'evidence sufficient to "deserve consideration by the jury," that is, evidence that a reasonable jury could find persuasive.' " (*People v. Landry* (2016) 2 Cal.5th 52, 120 (*Landry*).) Although doubts as to the sufficiency of the evidence should be resolved in favor of the accused (*People v. Barnett* (1998) 17 Cal.4th 1044, 1145 (*Barnett*)), if the evidence is speculative, minimal, or insubstantial, then the court need not instruct on its effect (*People v. Simon* (2016) 1 Cal.5th 98, 132).

" 'To justify an act of self-defense . . . , the defendant must have an honest *and reasonable* belief that bodily injury is about to be inflicted on him.' " (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064 (*Minifie*), quoting *People v. Goins* (1991) 228 Cal.App.3d 511, 516, italics in original.) Under this standard, "the jury must conclude that defendant 'was actually in fear of his life or serious bodily injury and that the conduct of the other party was such as to produce that state of mind *in a reasonable person*.' " (*People v. Wilson* (1976) 62 Cal.App.3d 370, 374 (*Wilson*), italics added.) In addition, even where the threat of bodily injury is imminent, " 'any right of self-defense is limited to the use of such force as is *reasonable under the circumstances*.' " (*Minifie*, at p. 1065, italics added, quoting *People v. Pinholster* (1992) 1 Cal.4th 865, 966 (*Pinholster*), disapproved on different grounds in *People v. Williams* (2010) 49 Cal.4th 405, 459.)

In this context, reasonableness is an objective standard, and the reasonableness requirement "is determined from the point of view of a reasonable person in the

defendant's position."[7] (*Minifie, supra*, 13 Cal.4th at p. 1065.) To do this, the jury "must consider all the ' " 'facts and circumstances . . . in determining whether the defendant acted in a manner in which *a reasonable man* would act in protecting his own life or bodily safety.' " ' " (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1083, italics in original.)

We review de novo the trial court's decision not to give a requested jury instruction. (*People v. Waidla* (2000) 22 Cal.4th 690, 733 (*Waidla*); *People v. Quarles* (2018) 25 Cal.App.5th 631, 634.)

B. *Analysis*

The trial court "refus[ed] to give self-defense instructions" in the absence of California statutory or case law authority that allowed self-defense as an available defense to a charge of making a criminal threat under Penal Code section 422. In reaching this conclusion, the court emphasized the difference between assaultive behavior (i.e., where the defendant is charged with an assaultive crime) and mere words (i.e., where the defendant is charged with a threat crime).

On appeal, Rodriguez argues that no California authority precludes the application of self-defense, by way of a threat, to an unlawful touching and directs our attention to

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[7] In considering the reasonable person, evidence of a defendant's mental illness is not admissible; the test is not whether someone "like" the defendant would reasonably believe there was danger, but "whether a 'reasonable person' in defendant's situation, seeing and knowing the same facts, would be justified in believing he was in imminent danger of bodily harm." (*People v. Jefferson* (2004) 119 Cal.App.4th 508, 519.) In this context, the reasonable person "is an abstract individual of *ordinary mental and physical capacity* who is as prudent and careful as any situation would require him to be." (*Ibid.*, italics added.)

two Penal Code statutes that, according to Rodriguez, justify otherwise criminal acts when done in self-defense.[8] Rodriguez also explains why, even if self-defense is limited to assaultive crimes, a criminal threat can be " 'assaultive in nature' when it involves a threat of immediate violent injury," as here.[9] Finally, in attempting to establish that the evidence at trial supported a finding that he acted in self-defense (and therefore required the requested jury instruction), Rodriguez characterizes the unwanted injection as a "medical battery" and argues that he was entitled to defend himself against Dr. S.'s "unlawful" conduct.[10]

In response, consistent with the trial court's ruling, the People principally rely on the lack of authority that allows the defense to allegations of a criminal threat.

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8 Penal Code sections 692 and 693 provide in part:

> "Lawful resistance to the commission of a public offense may be made: [¶] 1. By the party about to be injured . . . ."
> "Resistance sufficient to prevent the offense may be made by the party about to be injured: [¶] 1. To prevent an offense against his person . . . ."

The Attorney General does not mention these statutes in the People's brief on appeal.

9 In suggesting that the assaultive nature of the defendant's conduct should not be a determining factor whether self-defense applies, Rodriguez argues: "[A] defendant who threatens violence to frighten off an unlawful touching should not be placed in a worse position than a defendant who actually uses force to fend off the unlawful touching. In both cases, the defendant is acting to resist the unlawful touching, whether by threat or by actual use of force, and the act is justified as self-defense."

10 According to Rodriguez, "A doctor commits a medical battery when she provides a treatment for which consent was not obtained." He relies on a civil case in which the appellate court explained: " '["]Where a doctor obtains consent of the patient to perform one type of treatment and subsequently performs a substantially different treatment for which consent was not obtained, there is a clear case of battery.["]' (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1495[.)]"

Alternatively, the People argue that, *even if* self-defense applies to a charge of a criminal threat, the record *in this case* lacks substantial evidence to support its application (and, thus, did not require a jury instruction) on three bases: (1) Rodriguez, by his behavior, created the situation leading to the alleged harm (see *In re Christian S.* (1994) 7 Cal.4th 768, 773, fn. 1 ["[T]he ordinary self-defense doctrine—applicable when a defendant *reasonably* believes that his safety is endangered—may not be invoked by a defendant who, through his own wrongful conduct (e.g., the initiation of a physical assault or the commission of a felony), has created circumstances under which his adversary's attack or pursuit is legally justified."]); (2) Dr. S. did not administer the injection; and (3) because Rodriguez made the threats *after* the nurses administered the injection,[11] Rodriguez was not in imminent danger (see *Minifie, supra,* 13 Cal.4th at p. 1068 ["There must be evidence the defendant feared imminent . . . harm."]). The People also argued at length in opposition to Rodriguez's suggestion that, in ordering the injection, Dr. S. acted unlawfully.

However, we have no occasion to reach the merits of those arguments. As we explain, *even if* Rodriguez's legal theories are correct, he has not established reversible error on the record from his trial. Thus, we will assume—without deciding or expressing an opinion—that a defendant may assert self-defense as an affirmative defense to a charge of a criminal threat in violation of Penal Code section 422. We will further

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11 We agree with Rodriguez that the evidence does not establish conclusively whether Rodriguez threatened to kill Dr. S. before or after he received the injection from the nurse.

assume—without deciding or expressing an opinion—that, in ordering what she considered an intramuscular emergency medication for Rodriguez, Dr. S. acted unlawfully. Even with these assumptions, the record does not contain substantial evidence to support the application of the defense. Without substantial evidence to support the application of the defense, of course, the trial court did not err in failing to instruct the jury on self-defense. (*Brooks, supra,* 3 Cal.5th at p. 73.)

Based on our de novo review of the evidence as a whole (*Waidla, supra,* 22 Cal.4th at p. 733)—in a light most favorable to Rodriguez (*Mentch, supra,* 45 Cal.4th at p. 290) and resolving any doubts in favor of Rodriguez (*Barnett, supra,* 17 Cal.4th at p. 1145)—on two independent bases, the record lacks substantial evidence to support a jury instruction on the requested defense.

First, the record lacks evidence (or inferences from evidence) that a reasonable person in Rodriguez's position would have a reasonable fear of serious bodily injury from an intramuscular injection of medication.[12] The fear of an injection, however real it was to Rodriguez, was not objectively reasonable. Stated differently, the evidence of *Rodriguez's* fear of needles or injections—even an unwanted or unlawful injection—is not sufficient evidence of an *objectively reasonable fear of serious bodily injury.*[13]

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12 In this appeal, the only fear Rodriguez relies on is a fear of needles and/or injections. Because he does not express a fear of medications generally or antipsychotic drugs specifically, we do not consider how such fears, if a defendant proves they exist, may affect the entitlement to a self-defense instruction.

13 In an admittedly different context, we note that an extraction of blood "taken by a physician in a hospital environment according to accepted medical practices" is

Second, the record lacks evidence (or inferences from evidence) that a reasonable person in Rodriguez's position would threaten to return to the hospital after being discharged, seek out the doctor who ordered an injection, and kill her. As *Pinholster, supra*, 1 Cal.4th at page 966, teaches, "[t]he right of self-defense d[oes] not provide a defendant with any justification or excuse for using deadly force to repel a nonlethal attack." Accordingly, by threatening to kill a doctor who ordered a nonlethal injection, Rodriguez did not communicate an *objectively reasonable threat.*

Under *Minifie, supra*, 13 Cal.4th at pages 1064-1065, to justify self-defense, a defendant must have an objectively reasonable belief that bodily injury is about to be inflicted on him (see *Wilson, supra*, 62 Cal.App.3d at p. 374 ["serious bodily injury"]), and the force that a defendant uses must be objectively reasonably under the circumstances (see *Pinholster, supra*, 1 Cal.4th at p. 966 [cannot use "deadly force to repel a nonlethal attack"]). Contrasted with this standard, in the present case, the lack of evidence of any such *reasonable* fear of serious bodily injury or *reasonable* force under the circumstances relieved the trial court of an obligation to give a self-defense jury instruction. (*Landry, supra*, 2 Cal. 5th at p. 120.)

Accordingly, on the record presented, the trial court did not err in denying Rodriguez's request for a jury instruction on self-defense.

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considered to have been performed in a "reasonable manner" under the Fourth Amendment of our federal Constitution. (*Schmerber v. California* (1966) 384 U.S. 757, 771.)

C. *Harmless Error*

In closing, even if we assume that the trial court erred in denying Rodriguez's request for a self-defense instruction, we conclude that any conceivable error was harmless. The prosecution's evidence was strong; Rodriguez had been threatening everyone from the police to the CMH staff to the attending physician, and more than once Rodriguez directed credible threats to Dr. S. in her presence. In contrast, the self-defense evidence was weak; it was based on inferences and would have required the trier of fact to distinguish between obvious anger over an extended period and questionably reasonable fear at one point in time.

Recently, our Supreme Court confirmed that it has "yet to determine whether a trial court's failure to instruct on a requested affirmative defense instruction supported by substantial evidence is federal constitutional error or state law error." (*People v. Gonzalez* (2018) 5 Cal.5th 186, 199 [first degree felony murder; affirmative defense of self-defense].) Where, as here, the evidence on which the defendant relies "was, at best, extremely weak compared to the [prosecution's] evidence," a failure to instruct is harmless under both the federal standard (*Chapman v. California* (1967) 386 U.S. 18, 24) and the state standard (*People v. Watson* (1956) 46 Cal.2d 818, 836). (*People v. Sakarias* (2000) 22 Cal.4th 596, 621.)

IV. DISPOSITION

The judgment is affirmed.

IRION, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.